

STATE OF ILLINOIS
LIQUOR CONTROL COMMISSION

YNZ ENTERPRISES, INC.
d/b/a JEFFERSON BP
1987 WEST JEFFERSON STREET
JOLIET ILLINOIS

Appellant,

vs.

JOLIET LIQUOR CONTROL COMMISSION

Appellee.

Case No.: 21 APP 18

License Number: N/A

ORDER

THIS MATTER having come to be heard before the Liquor Control Commission of the State of Illinois (hereinafter “State Commission”) upon the appeal of YNZ Enterprises, Inc., d/b/a Jefferson BP, Appellant, (hereinafter “Jefferson BP”) the Commission being otherwise fully informed, and a majority of its members do hereby state the following:

Procedural History

Jefferson BP applied for a Joliet Class BG license permitting the off-premises sales of beer and wine and the on-premises consumption of beer and wine in conjunction with video gaming at 1987 West Jefferson Street, Joliet, Illinois. On August 13, 2021, the Deputy Liquor Commissioner held a license application hearing. On September 24, 2021, the Joliet Local Liquor Control Commissioner signed an order denying the Jefferson BP BG liquor license application. On October 5, 2021, the Joliet City Council adopted a Council Memo #466-21 to deny the Jefferson BP BG liquor license application. The denial order was served on an agent of Jefferson BP on October 8, 2021. On October 27, 2021, Jefferson BP filed an appeal with the State Commission. On February 24, 2022, the State Commission, represented by Chair Cynthia Berg and Commissioner Thomas Gibbons, heard on the record arguments of counsel on the matter. The State Commission as a

whole reviewed the entire record and deliberated on the matter at the April 20, 2022, State Commission meeting.

Decision

Upon review of the entire certified record, the State Commission REVERSES the order of the Joliet Liquor Control Commission (hereafter “Joliet Commission”) to deny the Jefferson BP Class BG liquor license.

Discussion

Section 7-9 of the Liquor Control Act of 1934 places the statutory responsibility to hear appeals from final orders entered by local liquor commissioners on the State Commission. 235 *ILCS 5/7-9*. If the county board, city council, or board of trustees of the associated jurisdiction has adopted a resolution requiring the review of an order to be conducted on the record, the State Commission will conduct an “On the Record” review of the official record of proceedings before the Local Liquor Commission. *Id.* The State Commission may only review the evidence found in the official record. *Id.* Joliet has adopted a local ordinance requiring any appeal from an order of the Joliet Liquor Commissioner to be a review of the official record. *Chapter 56, Joliet Liquor and Tobacco Code (“Joliet Liquor Code”)*. Accordingly, the State Commission will only review the evidence as found in the official record.

In reviewing the propriety of the order or action of the local liquor control commissioner, the State Commission shall consider the following questions:

- (a) Whether the local liquor control commissioner has proceeded in the manner provided by law;
- (b) Whether the order is supported by the findings;

(c) Whether the findings are supported by substantial evidence in the light of the whole record.

235 ILCS 5/7-9.

The Illinois Appellate Court has provided guidance that the State Commission's duty is to determine whether local agency abused its discretion. *Koehler v. Illinois Liquor Control Comm'n*, 405 Ill. App. 3d 1071, 1080, (2nd Dist. 2010). The Court held that "[s]uch review mandated assessment of the discretion used by the local authority, stating that '[t]he function of the State commission, then, in conducting a review on the record of license suspension proceedings before a local liquor control commissioner is to consider whether the local commissioner committed an abuse of discretion.'" *Id.*

A. Whether the local liquor control commissioner has proceeded in a manner provided by law.

The Joliet Commission acted in a manner provided by law by providing the Jefferson BP with the minimum due process to seek a liquor license. In reviewing the actions of a local liquor commission, the State Commission must review whether the local liquor commission offered appropriate process in arriving at its decision. Upon a review of the record in this case, the Joliet Commission satisfied the minimum requirements of law in the review and disposition of the Jefferson BP liquor license application.

Although the Liquor Control Act does not provide for a process by which a hearing is to occur for an application, the Joliet City Code provides for an application hearing process. The Code requires a hearing to take place within 30 days of the application. *ILCC p. 029*. The City Code further requires that the City Council be notified, and that the City Council determine that the issuance of the license is in the best interest of the city. *Id.* Following the review by the City

Council, the Local Liquor Commissioner issues an order consistent with the review conducted by the City Council. *Joliet City Code, Section 4-13*.

In this case, Joliet proceeded in the manner provided by law. Jefferson BP filed a class BG liquor license application and Joliet held a hearing on the application on August 13, 2021. *ILCC p. 020-025*. Following the hearing, the Joliet Local Liquor Control Commissioner signed an order denying the Jefferson BP Class BG liquor license application. *ILCC p. 065-066*. On October 5, 2021, the Joliet City Council adopted a Council Memo #463-21 to deny the Jefferson BP's Class BG liquor license application. *ILCC p. 011*. The Joliet Commission grounded its decision to deny the liquor license in Section 4-13(c)(10) of the Joliet Code which authorizes the Joliet Commission to consider the impact the issuance of a liquor license will have on the "surrounding neighborhood and the city as a whole." *ILCC p. 029*.

B. Whether the order is supported by the findings.

In reviewing whether the order is supported by the findings, this Commission analyzes whether the findings contained within the order constitute grounds to deny the license. The Illinois Appellate Court has ruled that, as a reviewing body, the issue is not whether the reviewing court would decide upon a more lenient penalty were it initially to determine the appropriate discipline, but rather, in view of the circumstances, whether this court can say that the commission, in opting for a particular penalty, acted unreasonably or arbitrarily or selected a type of discipline unrelated to the needs of the commission or statute. *Jacquelyn's Lounge, Inc. v. License Appeal Comm'n of City of Chicago*, 277 Ill. App. 3d 959, 966, (1st Dist. 1996).

In this case, the Joliet Commission did not issue an order consistent with the findings in the record because the final denial order was not sufficiently supported by the findings of the

application record. The Deputy Liquor Control Commissioner's Findings contained minimal negative information against the applicant or premises. Per the Findings, the applicant is of good character, will only sell 5% alcoholic liquor, owes no debt to the City, and there was very little public dissent to the issuance of the license. *ILCC pp. 131-132*. Per the Order denying the license, the Joliet Commissioner issued limited findings - namely that Jefferson BP filed an application for a Class BG license located at 1987 W. Jefferson Street, the premises is zoned for business, and the "property consists of a brick structure which is used as a convenience store (proposed premise) which supports the sale of motor fuel from several fuel pumping islands." *ILCC p. 065*. In addition, the Order stated that "evidence was received that a citizen was opposed to the issuance of the license." *Id.* From these findings, the Local Commissioner stated there was just cause to deny the Jefferson BP liquor license by stating:

The proposed premise (1987 W. Jefferson Street) is in the vicinity of a residential area. The issuance of an additional liquor license at this location, will likely have a negative impact on the surrounding neighborhood, as well as the city as a whole. The issuance of this type of license will have a negative impact on the city as a whole. Based on the foregoing Findings of Fact, the Commissioner hereby concludes that there exists just cause to deny the application for the issuance of a liquor license.

ILCC p. 066.

The Joliet Commissioner Order stated that the issuance of the license "will have a negative impact on the surrounding neighborhood" and "the city as a whole" but the basis of finding a negative impact of license issuance or why there was "just cause" to deny the license, remains unclear. The only negative finding was related to evidence received at the hearing that "a citizen was opposed to the issuance of the license." *ILCC p. 065*. It is unclear whether the basis for the finding was from testimony provided at the hearing or if the finding was based on an email reviewed and accepted by the hearing officer. At the hearing,

an agent for a competing liquor licensee objected to the issuance of the license but it was clear that the reason for the objection was “for competition reasons mostly.” *ILCC p. 023*. Another possible basis for the finding was an email accepted into the record from a concerned citizen, but the objection was an isolated opinion not representative of the surrounding community, and inconclusive because the author of the email objected to the addition of more “liquor stores.” *ILCC p. 059*. It is clear from the application that Jefferson BP will operate a gas station convenience store and gaming business, not a liquor store. If the denial Order was based on the either complaint, neither justify concluding that the Jefferson BP Class BG liquor license will have a negative impact on the neighborhood or City of Joliet.

C. Whether the findings are supported by substantial evidence in the light of the whole record.

The reasons the Joliet Commissioner could not substantiate the denial of a Class BG liquor license to Jefferson BP are due to the lack of evidence in the record demonstrating why the issuance of the Class BG license will negatively impact the specific residential area. In fact, the manifest weight of the evidence in the record demonstrates the opposite conclusion that the issuance of the license will not have a negative impact on the community. Upon review, an agency's findings of fact are held to be prima facie true and correct, and they must be affirmed unless the court concludes that they are against the manifest weight of the evidence.” *Daley v. El Flanboyan Corp.*, 321 Ill. App. 3d 68, 71, (1st Dist. 2001). A finding is “against the manifest weight of the evidence only if an opposite conclusion is clearly evident from the record.” *Vino Fino Liquors, Inc v. License Appeal Comm’n of the City of Chicago*, 394 Ill.App.3d 516, 522 (1st Dist. 2009).

In this case, an opposite conclusion “is clearly evident” that the issuance of a Class BG license to Jefferson BP will not have a negative impact on the surrounding community. First, the applicant complied with all necessary city inspection and documentation requirements related to the application. Per Joliet inspection documents all applicant related inspection requirements were approved. The Joliet Building and Fire Departments did not identify any violations that would have made the location unsafe for patrons and the Joliet financial review departments did not identify any significant and outstanding debts owed by the applicant to the City. *ILCC pp. 056-057, 058, 184.*

More importantly, the record does not demonstrate that the issuance of a license will create a law enforcement problem for the surrounding community. The Joliet Commission did not base its decision to deny the license on a law enforcement challenges and such challenges are clearly not evident in the record. Pursuant to a police background check, the owner of the business, Khurram Ghani, does not have any criminal convictions. *ILCC pp. 052-055.* Although the record does contain criminal incident reports at the applicant address 1987 W. Jefferson, it is unclear if the issuance of a Class BG liquor license will increase number of incidents at the location or increasingly burden the police or the community. In fact, the evidence suggests the opposite based on the written opinion of the Joliet Chief of Police who wrote: “I do not foresee any special law enforcement problems associated with the issuance of this license.” *ILCC p. 060.*

Lastly, the record demonstrates a lack of evidence that license issuance will negatively impact the surrounding residential community. Local zoning laws allow for the Class BG license use in a General Business district zone which is the zoning designation of the applicant address. The zoning map attached to the application file demonstrates that there is not a residential area within 100 feet of the boundaries of the applicant premises. *ILCC pp. 063-064.* In each direction

from the Jefferson BP location, there is either another business or a vacant lot. *ILCC p. 062*. Notably, the City Planner commented on the application by stating: “Approval of the requested liquor license should not alter the essential character of the area or the City as a whole.” *Id.* Finally, and importantly, while the record contains two objections from community members, as mentioned, such objections are either isolated and misinformed because of a resident objection to more “liquor stores” (*ILCC p. 059*), or self-serving in an attempt to limit competition in the sale of alcoholic beverages (*ILCC p. 023*). There are no objections from nearby residents that suggest the issuance of the license will cause property disruptions or bring a public nuisance to the community residents.

Because the evidence in the record contains very little, if any, evidence that the issuance of the license will create a law enforcement problem, will negatively impact the surrounding community, or will negatively impact the City of Joliet as a whole, the Joliet Commissioner did not rely on substantial evidence in light of the whole record to deny the Jefferson BP Class BG liquor license application.

IT IS HEREBY ORDERED:

For the reasons stated herein, the Joliet Commission did not rely on substantial evidence in light of the whole record, and the Joliet Commission denial Order is not supported by the findings. Therefore, the Joliet Commission decision to deny the Jefferson BP Class BG liquor license is REVERSED.


Pursuant to 235 ILCS 5/7-10 of the Illinois Liquor Control Act, a Petition for Rehearing may be filed with this Commission within twenty (20) days from the service of this Order. The date of mailing is deemed to be the date of service. If no Petition for Rehearing is filed, this order will be considered the final order in this matter. If the parties wish to pursue an Administrative Review action in the Circuit Court, the Petition for Rehearing must be filed within twenty (20) days after service of this Order as such the Petition for Rehearing is a jurisdictional prerequisite to filing an Administrative Review action.

ENTERED before the Illinois Liquor Control Commission at Chicago, Illinois, on April 20, 2022.


Cynthia Berg, Chairman



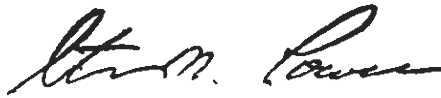
Melody Spann Cooper, Commissioner



Thomas Gibbons, Commissioner



Julieta LaMalfa, Commissioner



Steven Powell, Commissioner



Brian Sullivan, Commissioner

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COUNTY OF COOK) 21APP 18

UNDER PENALTY OF PERJURY, as provided by law, section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that I caused copies of the foregoing ORDER to be e-mailed by agreement of the parties prior to 5:00 p.m. on the following date: June 13, 2022.

/s/ Richard R. Haymaker

Richard R. Haymaker

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